

**Before the
COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of

Niagara County, New York, Sheriff's Office)
)
Request for Waiver of the January 1, 2013)
Narrowbanding deadline)
)

To: Chief, Public Safety and Homeland Security Bureau

Request for Waiver

Pursuant to Section 1.925 of the Federal Communications Commission's (the "Commission") rules, the Niagara County, New York Sheriff's Office (the "County") hereby submits a request for waiver of the January 1, 2013 narrowbanding deadline. The County is in the process of implementing a new P25 digital trunked public safety radio system in the UHF frequency band, which will be utilized by all emergency response, public safety and county government agencies within Niagara County. The County is currently under contract for this system with Motorola Solutions, Inc. ("Motorola") and the County is in the process of acquiring radio sites and finalizing the system design. This trunking system will replace the conventional wideband analog VHF High band stations currently in use by the County to dispatch public safety agencies within Niagara County.

The project schedule initially targeted a migration to the UHF system prior to January 1, 2013. However, delays resulting from site acquisition, environmental studies and regional integration have extended the implementation schedule into 2013. There are many variables that have a high probability of further impacting the schedule which could push the cutover date further into 2013. These factors include:

1. Two of six tower sites are still in the planning, leasing/acquisition, design and permitting/zoning process. There is no guarantee that the local planning and zoning agencies and boards will execute leases and/or approve the proposed towers within the projected time frames shown on the schedule. This process could potentially add six months to the project if one or two key sites are not acquired, zoned and permitted in a timely manner, as projected.
2. Radio sites will require New York State Environmental Quality Review and NEPA Environmental Impact Studies which, if complicated by environmental issues, could delay the project extensively. This delay would push back system deployment and commissioning.
3. Leases with landowners and third party tower owners have not been finalized. Should site acquisition efforts arrive at an impasse or be delayed for mutual approval, the County may have to locate alternate sites and negotiate those leases. These processes could further push the schedule past the January 1 2013 deadline.
4. Radio coverage testing must be scheduled when the weather and foliage support the testing plan required by the County and accepted by the vendor.

If the system is only partially built out by January 1, 2013 due to delays in site acquisition, zoning, permitting, etc, it will be necessary to continue to operate the current VHF frequencies until such time that all site development and connectivity is completed and coverage can be successfully tested on the system.

Specifically, the County requests until November 30, 2013 to complete its migration from all applicable VHF wideband analog stations.

The information provided in this waiver request pertains to all public safety agencies within Niagara County that plan to migrate to the planned UHF trunking system. A list of the applicable call signs has been provided in Appendix A.

In DA 11-1189 released on July 13, 2011, the Commission provided guidance to licensees for the filing of waivers of the narrowbanding deadline. The Commission cited the requirements of FCC rules section 1.925¹ which state that waivers must demonstrate that “(i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.” Relative to the requirements of FCC rules section 1.925, the Commission recommended the following content for waiver requests:

- Steps already taken to plan for, initiate, and complete the transition to narrowband operations
- System size and complexity
- Whether system equipment is narrowband-capable or must be replaced or upgraded
- Whether the licensee plans additional system upgrades or improvements in addition to converting to narrowband operation
- Funding sources, including whether the licensee’s budget requires government approval or a multi-year budget process
- Whether the licensee’s narrowbanding schedule is affected by neighboring systems due to interoperability relationship or other interdependencies
- Plans to minimize the negative impact of extended wideband operations on co-channel and adjacent channel operations, including a description of the spectrum environment in the affected area
- If the licensee plans to migrate to a non-VHF/UHF band (e.g., 700 MHz or 800 MHz), whether it will relinquish VHF/UHF spectrum once it has migrated and the amount of spectrum to be relinquished

Further, the Commission has requested the following:

- What steps in the process have been or will be taken prior to January 1, 2013

¹ 47.C.F.R §§ 1.925(b)(3)

- Anticipated dates of commencement and completion of:
 - Replacement or retuning of mobiles/portables
 - Infrastructure replacement or returning

The County has supplied applicable criteria for each of the above listed FCC recommendations for waiver content.

Steps already taken to plan for, initiate, and complete the transition to narrowband operations

The County is well aware of the FCC requirements for licensees to migrate to narrowband operations. One of the driving factors behind the planned UHF system is to satisfy narrowbanding requirements by permitting agencies to migrate off of legacy VHF spectrum. The County determined that a new UHF trunking system was the ideal technology to both satisfy the narrowbanding deadline and correct critical system deficiencies including coverage, capacity, and interoperability.

The County received unsolicited proposals from a radio system vendor, but concluded after some investigation that it was in their best interest to pursue a competitive procurement. An RFP was issued and vendor proposals were evaluated. The County has entered into a contract with Motorola Solutions, Inc. at the end of December 2011. At this time the system design has been finalized pending site acquisition, orders have been placed with Motorola Solutions Inc. for the system infrastructure.

Pursuant to FCC rules section 1.925, the County has no other viable narrowbanding alternative than to proceed with the plans currently in place. Insufficient time exists to properly plan and execute an alternative approach which would satisfy the January 1, 2013 deadline. Such an approach would require funding to replace infrastructure incapable of narrowband operation and resources which are not available in lieu of the present commitment to build out a UHF trunked system. An alternate approach would likely involve the ongoing use of conventional and simplex VHF equipment which would not address critical communications deficiencies presently experienced within the County. Therefore, an alternate approach would be inequitable, unduly burdensome, and contrary to the public interest.”

System size and complexity

The County is comprised of roughly 523 square miles of land and is bounded on the south by Tonawanda Creek, on the east by Orleans County, and on the west and north by the US/Canadian border. . The County includes 3 cities, 5 villages, 12 towns, and 3 Native American reservations/lands. According to the 2010 US Census, the County has a population of approximately 216,469.

The legacy systems currently in place within Niagara County are comprised of over 30 conventional VHF low band, VHF high band, and UHF simplex and repeater stations.

The proposed system will be a countywide simulcast trunked system utilizing 6 tower sites. The system is designed to provide countywide portable hip-level on street coverage. The system will operate on the P25 Phase I standard and be capable of P25 Phase II utilizing TDMA. The system as proposed by Motorola will utilize 8 frequencies in a single simulcast zone and be connected by a microwave network. The system will support up to 1200 subscriber radios within the first year of operation.

It was determined that a countywide trunked simulcast P25 system was the only technology available which would adequately address the communications deficiencies experienced on the present conventional systems. Pursuant to FCC rules Section 1.925, failure to build out the trunked system in lieu of another narrowbanding approach will be contrary to the public interest.

Whether system equipment is narrowband-capable or must be replaced or upgraded

The legacy VHF subscriber equipment and fixed infrastructure in use within the County is comprised of a mix of fixed equipment that is not narrowbanding capable and mobile equipment that can be upgraded to narrowband operation. However, none of this legacy equipment is capable of operating in the UHF band.

Therefore, VHF high band subscriber equipment and fixed infrastructure currently in use within the County will be replaced when the UHF system is implemented.

Whether the licensee plans additional system upgrades or improvements in addition to converting to narrowband operation

The County's narrowband migration will consist of the implementation of an entirely new UHF P25 Phase I simulcast trunked system. The system will address critical coverage, capacity, and interoperability deficiencies experienced on the present VHF conventional systems.

The system replacement is necessary to provide first responders with an effective and reliable communications system that provides interoperability between agencies. Failure to provide the system in lieu of another narrowbanding alternative will be contrary to the public interest.

Funding sources, including whether the licensee's budget requires government approval or a multi-year budget process

The planned UHF P25 trunking system will be fully funded by a County Bond. The budget for the planned system was approved by the County Legislature in December 2012 when the contract was signed with Motorola. The contracted price of the system is \$10,000,000. As evidence of the County's funding commitment, signed contract pages from the Motorola contract has been provided in Appendix B.

Because of the County's funding commitment to build out a countywide trunked system, there are insufficient funds for the County to pursue an alternate approach which would assure compliance with January 1, 2013 deadline. Such an approach would be inequitable, unduly burdensome or contrary to the public interest.

Whether the licensee's narrowbanding schedule is affected by neighboring systems due to interoperability relationship or other interdependencies

The County's narrowbanding schedule is minimally affected by neighboring systems. One neighboring system currently operates in the UHF frequency band on a conventional platform. For other neighboring jurisdictions that do utilize VHF and UHF radio systems, the County will rely upon specific

narrowband channels which will be utilized for interoperability purposes. Gateway systems will be used where applicable to minimize any degradation experienced by cross communication between wideband and narrowband programmed radios. The County is actively communicating with interoperability partners to assure that interoperability is maintained throughout the narrowbanding transition and following the County's migration to a trunked P25 platform.

Plans to minimize the negative impact of extended wideband operations on co-channel and adjacent channel operations, including a description of the spectrum environment in the affected area

Most of the jurisdictions immediately neighboring the County to the east are in the planning and procurement stages of implementing 800 MHz systems, and will thus not be impacted by the extended wideband operations within the County. For those neighboring agencies to the east and south that will continue to operate VHF and UHF systems, co-channel interference problems are not expected to increase because of the transition to narrowband operations. Anticipated interference problems would likely be adjacent channel in nature. 7.5 kHz-offset adjacent channels in the VHF band have been available for quite some time but have been treated by frequency coordinators as co-channel to adjacent wideband operations. No additional interference is anticipated from existing licensed stations. Potential interference from existing stations is anticipated to decrease as neighboring jurisdictions narrowband their equipment. Interference resulting from the extended use of wideband channels is only expected by new licensees operating in closer proximities than those distances currently permitted by frequency coordinators. The County will address these interference issues on a case by case basis, and will take all reasonable steps necessary to remedy the interference. These steps will include adjusting antenna patterns, reducing base station ERP, reducing mobile ERP, narrowbanding specific channels if the level of effort is manageable, or ceasing operating altogether.

The overall length of time the County will operate on wideband channels beyond January 1, 2013 is anticipated to be no longer than 9 months. Based on typical licensing times for new stations and typical system build-out periods of 1 year, the amount of time that any interference issues could be expected will be minimal.

If the licensee plans to migrate to a non-VHF/UHF band (e.g., 700 MHz or 800 MHz), whether it will relinquish VHF/UHF spectrum once it has migrated and the amount of spectrum to be relinquished

The County plans to migrate primary operations to the 420 MHz UHF frequency band. Once the 420 MHz system has been accepted and cutover to the system has been completed, most legacy VHF equipment licensed to the County will be decommissioned and the corresponding spectrum will be relinquished. A list of the applicable call signs and frequencies held by the County which will be narrowbanded or relinquished following cutover to the UHF system have been provided in Appendix C.

Narrowbanding Timetable

The County and Motorola Solutions, Inc. have developed a detailed project schedule outlining the step by step implementation schedule. The detailed project schedule has been provided in Appendix D.

Pursuant to DA 11-1189, the following key dates have been provided:

<u>Milestone</u>	<u>Completion Date</u>
All Site/infrastructure Equipment Ordered	June 1, 2012
Equipment Radio/Microwave/Paging Staging Completed	July, 2012
Radio Sites Secured	October 31, 2012
System Design Finalized	December 1, 2012
Site Construction Completed	June 131, 2013
Fixed Infrastructure Installed/Optimized	July 30, 2013
System Functional Testing Completed	August 30, 2013
System Coverage Testing Completed	September15, 2013
Subscriber Units Deployment Complete	September 30, 2013
System Cutover Completed	October 30, 2013
System Acceptance	November 30, 2013

Authority to Grant the Requested Waiver

Section 1.925(b)(3) allows the Commission to grant waivers if the underlying purpose of the rule would not be served or would be frustrated by application of the rule in the instant case and/or in view of the unique circumstances, the application of the rule would be inequitable, unduly burdensome, or contrary to the public interest.²

The narrowbanding deadline was established as a means to force land mobile radio users to implement spectrally efficient technologies so that newly created channels could be effectively utilized. The County is currently implementing a spectrally efficient technology available in a P25 Phase I trunked simulcast FDMA system. The system as proposed will utilize 8 repeater frequencies compared to the over 25 stations currently in use within the County. Forcing the County to adhere to the January 1, 2013 will require the County to abandon the planned UHF trunking system and develop an alternate strategy to renew legacy VHF and UHF systems. This requirement would be contrary to the underlying purpose of

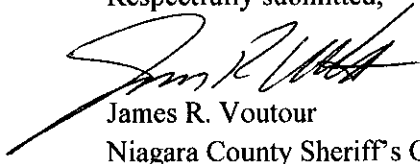
² 47.C.F.R §§ 1.925(b)(3)

The County has committed extensive time and resources into the current plan to build out a trunked UHF system. The technology was identified as the optimum solution to address the critical deficiencies identified within the present communications systems. Should the system not be constructed as planned, first responders will be forced to continue to utilize communications systems which provide inadequate coverage, capacity, and interoperability. Based on the resources committed to the present project, it is not likely that an alternate narrowbanding approach could be developed which would satisfy the January 1, 2013 deadline. Therefore, application of the rule would be inequitable, unduly burdensome, and contrary to the public interest. In the instant case, the County has no other reasonable alternative than to proceed with the presently planned UHF system.

Conclusion

The County has shown that granting of the requested relief would be in the public interest and would promote safety of life and property. The requested relief falls squarely under the provisions of Section 1.925(b)(3) of the Commission's rules. The Commission has the ability to grant this application and significantly improve the communications capabilities for the first responders within Niagara County. The County requests that the Commission find this request in the public interest and grant the application, as submitted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James R. Voutour", is written over the typed name.

James R. Voutour
Niagara County Sheriff's Office

Appendix A – Niagara County Call Signs

<u>CALL SIGN</u>	<u>LICENSEE</u>
KAS410	NIAGARA, COUNTY OF
KAT537	NIAGARA, COUNTY OF
KB95752	NIAGARA, COUNTY OF
KC3716	NIAGARA, COUNTY OF
KC7082	NIAGARA, COUNTY OF
KC7082	NIAGARA, COUNTY OF
KCU281	NIAGARA, COUNTY OF
KCU282	NIAGARA, COUNTY OF
KDU461	NIAGARA, COUNTY OF
KDY408	NIAGARA, COUNTY OF
KE2681	NIAGARA, COUNTY OF
KEA954	NIAGARA, COUNTY OF
KEC990	NIAGARA, COUNTY OF
KED592	NIAGARA, COUNTY OF
KED593	NIAGARA, COUNTY OF
KED594	NIAGARA, COUNTY OF
KEE804	NIAGARA, COUNTY OF
KEI440	NIAGARA, COUNTY OF
KEI441	NIAGARA, COUNTY OF
KEJ396	NIAGARA, COUNTY OF
KEJ397	NIAGARA, COUNTY OF
KEJ698	NIAGARA, COUNTY OF
KEJ699	NIAGARA, COUNTY OF
KEJ704	NIAGARA, COUNTY OF
KEJ706	NIAGARA, COUNTY OF
KEL400	NIAGARA, COUNTY OF
KGK717	NIAGARA, COUNTY OF
KGV813	NIAGARA, COUNTY OF
KGV815	NIAGARA, COUNTY OF
KGV820	NIAGARA, COUNTY OF
KGV823	NIAGARA, COUNTY OF
KJI441	NIAGARA, COUNTY OF
KLK570	NIAGARA, COUNTY OF
KNCC809	NIAGARA, COUNTY OF
KNDL873	NIAGARA, COUNTY OF
KNNJ580	NIAGARA, COUNTY OF
KQP695	NIAGARA, COUNTY OF
KSZ229	NIAGARA, COUNTY OF

KVF715	NIAGARA, COUNTY OF
KWH604	NIAGARA, COUNTY OF
KWI912	NIAGARA, COUNTY OF
KWI913	NIAGARA, COUNTY OF
KWM670	NIAGARA, COUNTY OF
KXL302	NIAGARA, COUNTY OF
KYK321	NIAGARA, COUNTY OF
WNFA738	NIAGARA, COUNTY OF
WNKA570	NIAGARA, COUNTY OF
WNLH812	NIAGARA, COUNTY OF
WPKJ517	NIAGARA, COUNTY OF
WPMU614	NIAGARA, COUNTY OF
WPPC454	NIAGARA, COUNTY OF
WPPU248	NIAGARA, COUNTY OF
WPZE790	NIAGARA, COUNTY OF
WQCB737	NIAGARA, COUNTY OF
WQCC454	NIAGARA, COUNTY OF
WQCC455	NIAGARA, COUNTY OF
WQD706	NIAGARA, COUNTY OF
WXK562	NIAGARA, COUNTY OF
WXY537	NIAGARA, COUNTY OF
WYC579	NIAGARA, COUNTY OF
WZZ265	NIAGARA, COUNTY OF

Appendix B – Proof of Funding

Communications System Agreement

Motorola Solutions, Inc., a corporation existing under the laws of the State of Delaware, its successor and assigns ("Motorola") and Niagara County, New York ("Customer") enter into this "Agreement," pursuant to which Customer will purchase and Motorola will sell the System, as described below. Motorola and Customer may be referred to individually as a "Party" and collectively as the "Parties." For good and valuable consideration, the Parties agree as follows:

Section 1 EXHIBITS

The exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement takes precedence over the exhibits and any inconsistency between Exhibits A through E will be resolved in their listed order.

Exhibit A Motorola "Software License Agreement"
Exhibit B "Payment Schedule"
Exhibit C "Technical and Implementation Documents"

C-1 "Niagara System Description - Design Change Summary dated 12/21/11

C-2 New project schedule including the Spire's Apartment site and Barker site dated 12/21/11.

C-3 New Scope of work (revision tool is on to show changes) to add an 8th channel at every site, Spire's apartment and Barker site dated 12/21/11.

C-4 New coverage maps showing the five (5) original sites with the addition of Spire's Apartments and the Barker site. Maps included will be portable talk-out, portable talk-back, mobile talk-out and mobile talk-back dated 12/21/11.

C-5 New system price and equipment list for the entire project. Also, a price and equipment list for the subscriber radios detailing our commitment to provide APX subscribers to all agencies except Lockport Fire dated 12/21/11.

C-6 Insurance compliance Matrix – dated 12/28/11

Exhibit D Motorola's proposal dated October 11, 2011 sections:
- 5.0 Compliance Matrix
- 8.5 Acceptance Test Plans

Exhibit E "System Acceptance Certificate"
Exhibit F Customers RFP #2011-47

Section 2 DEFINITIONS

Capitalized terms used in this Agreement have the following meanings:

2.1. "Acceptance Tests" means those tests described in the Acceptance Test Plan.

2.2. "Beneficial Use" means when Customer first uses the System or a Subsystem for operational purposes (excluding training or testing).

2.3. "Confidential Information" means any information that is disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, or identified at the time of disclosure as being confidential or its equivalent; or if the information is in verbal form, it is identified as confidential at the time of disclosure and is confirmed in writing within thirty (30) days of the disclosure. Confidential Information does not include any information that: is or becomes publicly known through no wrongful act of the receiving Party; is already known to the receiving Party without restriction when it is disclosed; is or becomes, rightfully and without breach of this Agreement, in the receiving Party's possession without any obligation restricting disclosure; is independently developed by the receiving Party without breach of this Agreement; or is explicitly approved for release by written authorization of the disclosing Party.

- 2.4. "Contract Price" means the price for the System, excluding applicable sales or similar taxes and freight charges.
- 2.5. "Effective Date" means that date upon which the last Party executes this Agreement.
- 2.6. "Equipment" means the equipment that Customer purchases from Motorola under this Agreement. Equipment that is part of the System is described in the Equipment List.
- 2.7. "Force Majeure" means an event, circumstance, or act of a third party that is beyond a Party's reasonable control (e.g., an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, and riots).
- 2.8. "Infrastructure Equipment" means equipment located at a site or dispatch center to include, base stations, microwave, central equipment and dispatch control equipment.
- 2.9. "Infringement Claim" means a third party claim alleging that the Equipment manufactured by Motorola or the Motorola Software directly infringes a United States patent or copyright.
- 2.10. "Motorola Software" means Software that Motorola or its affiliated company owns.
- 2.11. "Non-Motorola Software" means Software that another party owns.
- 2.12. "Open Source Software" (also called "freeware" or "shareware") means software that has its underlying source code freely available to evaluate, copy, and modify.
- 2.13. "Proprietary Rights" means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment and Software, including those created or produced by Motorola under this Agreement and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Motorola or another party.
- 2.14. "Software" means the Motorola Software and Non-Motorola Software, in object code format that is furnished with the System or Equipment.
- 2.15. "Specifications" means the functionality and performance requirements that are described in the Technical and Implementation Documents.
- 2.16. "Subscribers" means mobiles, portables and control stations
- 2.17. "Subsystem" means a major part of the System that performs specific functions or operations. Subsystems are described in the Technical and Implementation Documents.
- 2.18. "System" means the Equipment, Software, and incidental hardware and materials that are combined together into an integrated system; the System is described in the Technical and Implementation Documents.
- 2.19. "System Acceptance" means the Acceptance Tests have been successfully completed.
- 2.20. "Warranty Period" means:
- One (1) year from the date of System Acceptance for Infrastructure Equipment;
 - Five (5) years from the date of System Acceptance for Shelters;
 - Five (5) years from the date of System Acceptance for Subscribers;
 - Ten (10) years from the date of System Acceptance for Towers;
 - One (1) year from the date of System Acceptance for all other Equipment and Software.

Section 3 SCOPE OF AGREEMENT AND TERM

3.1. SCOPE OF WORK. Motorola will provide, install and test the System, and perform its other contractual responsibilities, all in accordance with this Agreement. Customer will perform its contractual responsibilities in accordance with this Agreement.

3.2. CHANGE ORDERS. Either Party may request changes within the general scope of this Agreement. If a requested change causes an increase or decrease in the cost or time required to perform this Agreement, the Parties will agree to an equitable adjustment of the Contract Price, Performance Schedule, or both, and will reflect the adjustment in a change order. Neither Party is obligated to perform requested changes unless both Parties execute a written change order.

3.3. TERM. Unless terminated in accordance with other provisions of this Agreement or extended by mutual agreement of the Parties, the term of this Agreement begins on the Effective Date and continues until the date of Final Project Acceptance or expiration of the Warranty Period, whichever occurs last.

3.4. ADDITIONAL EQUIPMENT OR SOFTWARE. For three (3) years after System Acceptance, Customer may order additional Equipment or Software if it is then available. Each order must refer to this Agreement and must specify the pricing and delivery terms. Notwithstanding any additional or contrary terms in the order, the applicable provisions of this Agreement will govern the purchase and sale of the additional Equipment or Software. Title and risk of loss to additional Equipment will pass at shipment, warranty will commence upon delivery, and payment is due within twenty (20) days after the invoice date. Motorola will send Customer an invoice as the additional Equipment is shipped or Software is licensed. Alternatively, Customer may register with and place orders through Motorola Online ("MOL"), and this Agreement will be the "Underlying Agreement" for those MOL transactions rather than the MOL On-Line Terms and Conditions of Sale. MOL registration and other information may be found at <http://www.motorola.com/businessandgovernment/> and the MOL telephone number is (800) 814-0601.

3.5. MAINTENANCE SERVICE. During the Warranty Period, in addition to warranty services, Motorola will provide maintenance services for the Equipment and support for the Motorola Software pursuant to the Statement of Work set forth in Exhibit D. Those services and support are included in the Contract Price. If Customer wishes to purchase additional maintenance and support services for the Equipment during the Warranty Period, or any maintenance and support services for the Equipment either during the Warranty Period or after the Warranty Period, the description of and pricing for the services will be set forth in a separate document. If Customer wishes to purchase extended support for the Motorola Software after the Warranty Period, it may do so by ordering software subscription services. Unless otherwise agreed by the parties in writing, the terms and conditions applicable to those maintenance, support or software subscription services will be Motorola's standard Service Terms and Conditions, together with the appropriate statements of work.

3.6. MOTOROLA SOFTWARE. Any Motorola Software, including subsequent releases, is licensed to Customer solely in accordance with the Software License Agreement. Customer hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.

3.7. NON-MOTOROLA SOFTWARE. Any Non-Motorola Software is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Licensor's rights and protections under the Software License Agreement. Non-Motorola Software may include Open Source Software. All Open Source Software is licensed to Customer in accordance with, and Customer agrees to abide by, the provisions of the standard license of the copyright owner and not the Software License Agreement. Upon request by Customer, Motorola will use commercially reasonable efforts to determine whether any Open Source Software will be provided under this Agreement; and if so, identify the Open Source Software and provide to Customer a copy of the applicable standard license (or specify where that license may be found); and provide to Customer a copy

of the Open Source Software source code if it is publicly available without charge (although a distribution fee or a charge for related services may be applicable).

3.8. **SUBSTITUTIONS.** At no additional cost to Customer, Motorola may substitute any Equipment, Software, or services to be provided by Motorola, if the substitute meets or exceeds the Specifications and is of equivalent or better quality to the Customer, subject to Customer's approval. Any substitution will be reflected in a change order.

3.9. **OPTIONAL EQUIPMENT OR SOFTWARE.** This paragraph applies only if a "Priced Options" exhibit is shown in Section 1, or if the parties amend this Agreement to add a Priced Options exhibit. During the term of the option as stated in the Priced Options exhibit (or if no term is stated, then for one (1) year after the Effective Date), Customer has the right and option to purchase the equipment, software, and related services that are described in the Priced Options exhibit. Customer may exercise this option by giving written notice to Seller which must designate what equipment, software, and related services Customer is selecting (including quantities, if applicable). To the extent they apply, the terms and conditions of this Agreement will govern the transaction; however, the parties acknowledge that certain provisions must be agreed upon, and they agree to negotiate those in good faith promptly after Customer delivers the option exercise notice. Examples of provisions that may need to be negotiated are: specific lists of deliverables, statements of work, acceptance test plans, delivery and implementation schedules, payment terms, maintenance and support provisions, additions to or modifications of the Software License Agreement, hosting terms, and modifications to the acceptance and warranty provisions.

Section 4 PERFORMANCE SCHEDULE

The Parties will perform their respective responsibilities in accordance with the Performance Schedule. By executing this Agreement, Customer authorizes Motorola to proceed with contract performance.

Section 5 CONTRACT PRICE, PAYMENT AND INVOICING

5.1. **CONTRACT PRICE.** The Contract Price in U.S. dollars is \$10,000,000.00. If applicable, a pricing summary is included with the Payment Schedule. Motorola has priced the services, Software, and Equipment as an integrated system. A reduction in Software or Equipment quantities, or services, may affect the overall Contract Price, including discounts if applicable.

5.2. **INVOICING AND PAYMENT.** Motorola will submit invoices to Customer according to the Payment Schedule. Except for a payment that is due on the Effective Date, Customer will make payments to Motorola within thirty (30) days after the date of each invoice. Customer will make payments when due in the form of a wire transfer, check, or cashier's check from a U.S. financial institution. Overdue invoices will bear simple interest at the maximum allowable rate. For reference, the Federal Tax Identification Number for Motorola Solutions, Inc. is 36-1115800.

5.3. **FREIGHT, TITLE, AND RISK OF LOSS.** Motorola will pre-pay and add all freight charges to the invoices. Title to the Equipment will pass to Customer upon delivery. Title to Software will not pass to Customer at any time. Risk of loss will pass to Customer upon delivery of the Equipment to the Customer. Motorola will pack and ship all Equipment in accordance with good commercial practices.

5.4. **INVOICING AND SHIPPING ADDRESSES.** Invoices will be sent to the Customer at the following address:

EMERGENCY SERVICES PUBLIC SAFETY BUILDING
5574 NIAGARA ST EXT., LOCKPORT, N.Y. 14094

The city which is the ultimate destination where the Equipment will be delivered to Customer is:

LOCKPORT, N.Y. 14094

The Equipment will be shipped to the Customer at the following address (insert if this information is known):

EMERGENCY SERVICES PUBLIC SAFETY BUILDING

5574 NIAGARA ST. EXT., LOCKPORT, N.Y. 14094

Customer may change this information by giving written notice to Motorola.

Section 6 SITES AND SITE CONDITIONS

6.1. ACCESS TO SITES. Customer will provide a designated project manager; required licenses, and access to the work sites or vehicles identified in the Technical and Implementation Documents as reasonably requested by Motorola so that it may perform its duties in accordance with the Performance Schedule and Statement of Work. As indicated in the Statement of Work, Motorola will obtain any necessary local building and electrical permits and any inspections that may be needed to be coordinated with local, municipal and Niagara County authorities to complete site development.

6.2. SITE CONDITIONS. Customer will ensure that the Mt. View and Dispatch sites it provides will be safe, secure, and in compliance with all applicable industry and OSHA standards. To the extent applicable and unless the Statement of Work states to the contrary, Customer will ensure that these work sites have adequate: physical space; air conditioning and other environmental conditions; adequate and appropriate electrical power outlets, distribution, equipment and connections; and adequate telephone or other communication lines (including modem access and adequate interfacing networking capabilities), all for the installation, use and maintenance of the System. Before installing the Equipment or Software at a work site, Motorola will inspect the work site and advise Customer of any apparent deficiencies or non-conformities with the requirements of this Section.

6.3. SITE ISSUES. If a Party determines that the sites identified in the Technical and Implementation Documents are no longer available or desired, or if subsurface, structural, adverse environmental or latent conditions at any site differ from those indicated in the Technical and Implementation Documents, the Parties will promptly investigate the conditions and will select replacement sites or adjust the installation plans and specifications as necessary. If change in sites or adjustment to the installation plans and specifications causes a change in the cost or time to perform, the Parties will equitably amend the Contract Price, Performance Schedule, or both, by a change order. This Agreement is predicated upon normal soil conditions as defined by the version of E.I.A. standard RS-222 in effect on the Effective Date.

Section 7 TRAINING

Any training to be provided by Motorola to Customer will be described in the Statement of Work. Customer will notify Motorola immediately if a date change for a scheduled training program is required. If Motorola incurs additional costs because Customer reschedules a training program less than thirty (30) days before its scheduled start date, Motorola may recover these additional costs.

Section 8 SYSTEM ACCEPTANCE

8.1. COMMENCEMENT OF ACCEPTANCE TESTING. Motorola will provide to Customer at least ten (10) days notice before the Acceptance Tests commence. System testing will occur only in accordance with the Acceptance Test Plan.

8.2. SYSTEM ACCEPTANCE. System Acceptance will occur upon successful completion of the Acceptance Tests. Upon System Acceptance, the Parties will memorialize this event by promptly executing a System Acceptance Certificate. If the Acceptance Test Plan includes separate tests for individual Subsystems or phases of the System, acceptance of the individual Subsystem or phase will occur upon the successful completion of the Acceptance Tests for the Subsystem or phase, and the Parties will promptly execute an acceptance certificate for the Subsystem or phase. If Customer believes the System has failed the completed Acceptance Tests, Customer will provide to Motorola a written notice that includes the specific details of the failure. If Customer does not provide to Motorola a failure notice within thirty (30) days after completion of the Acceptance Tests, System Acceptance will be deemed to have occurred as of the completion of the Acceptance Tests. Minor omissions or variances in the System that do not materially impair the operation of the System as provided in the Specifications and

Acceptance Test Plan will not postpone System Acceptance or Subsystem acceptance, but will be corrected according to a mutually agreed schedule.

8.3. **BENEFICIAL USE.** Customer acknowledges that Motorola's ability to perform its implementation and testing responsibilities may be impeded if Customer begins using the System before System Acceptance. Therefore, Customer will not commence Beneficial Use before System Acceptance.

8.4 **FINAL PROJECT ACCEPTANCE.** Final Project Acceptance will occur after System Acceptance when all deliverables and other work have been completed. When Final Project Acceptance occurs, the parties will promptly memorialize this final event by so indicating on the System Acceptance Certificate.

Section 9 REPRESENTATIONS AND WARRANTIES

9.1. **SYSTEM FUNCTIONALITY.** Motorola represents that the System will perform in accordance with the Specifications in all material respects. Upon System Acceptance or Beneficial Use, whichever occurs first, this System functionality representation is fulfilled. Motorola is not responsible for System performance deficiencies that are caused by ancillary equipment not furnished by Motorola which is attached to or used in connection with the System or for reasons or parties beyond Motorola's control, such as natural causes; the construction of a building that adversely affects the microwave path reliability or radio frequency (RF) coverage; the addition of frequencies at System sites that cause RF interference or intermodulation; or Customer changes to load usage or configuration outside the Specifications.

9.2. **EQUIPMENT WARRANTY.** During the Warranty Period, Motorola warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship. If System Acceptance is delayed beyond six (6) months after shipment of the Equipment by events or causes within Customer's control, this warranty expires eighteen (18) months after the shipment of the Equipment.

9.3. **SOFTWARE WARRANTY.** Unless otherwise stated in the Software License Agreement, during the Warranty Period, Motorola warrants the Software in accordance with the terms of the Software License Agreement and the provisions of this Section 9 that are applicable to the Software. If System Acceptance is delayed beyond six (6) months after shipment of the Software by events or causes within Customer's control, this warranty expires eighteen (18) months after the shipment of the Software. TO THE EXTENT, IF ANY, THAT THERE IS A SEPARATE LICENSE AGREEMENT PACKAGED WITH, OR PROVIDED ELECTRONICALLY WITH, A PARTICULAR PRODUCT THAT BECOMES EFFECTIVE ON AN ACT OF ACCEPTANCE BY THE END USER, THEN THAT AGREEMENT SUPERCEDES THIS SOFTWARE LICENSE AGREEMENT AS TO THE END USER OF EACH SUCH PRODUCT.

9.4. **EXCLUSIONS TO EQUIPMENT AND MOTOROLA SOFTWARE WARRANTIES.** These warranties do not apply to: (i) defects or damage resulting from: use of the Equipment or Motorola Software in other than its normal, customary, and authorized manner; accident, liquids, neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Motorola; Customer's failure to comply with all applicable industry and OSHA standards; (ii) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (iii) Equipment that has had the serial number removed or made illegible; (iv) batteries (because they carry their own separate limited warranty) or consumables; (v) freight costs to ship Equipment to the repair depot; (vi) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (vii) normal or customary wear and tear.

9.5. **WARRANTY CLAIMS.** To assert a warranty claim, Customer must notify Motorola in writing of the claim before the expiration of the Warranty Period. Upon receipt of this notice, Motorola will investigate the warranty claim. If this investigation confirms a valid warranty claim, Motorola will (at its option and at no additional charge to Customer) repair the defective Equipment or Motorola Software or replace it with the same or equivalent product. That action will be the full extent of Motorola's liability for the warranty claim. If this investigation indicates the warranty claim is not valid, then Motorola may invoice Customer for responding to the claim on a time and materials basis using Motorola's then current labor rates. Repaired or replaced product is warranted for the balance of the original applicable warranty period. All replaced products or parts will become the property of Motorola.

9.6. ORIGINAL END USER IS COVERED. These express limited warranties are extended by Motorola to the original user purchasing the System for commercial, industrial, or governmental use only, and are not assignable or transferable.

Section 10 DELAYS

10.1. FORCE MAJEURE. Neither Party will be liable for its non-performance or delayed performance if caused by a Force Majeure. A Party that becomes aware of a Force Majeure that will significantly delay performance will notify the other Party promptly (but in no event later than fifteen days) after it discovers the Force Majeure. If a Force Majeure occurs, the Parties will execute a change order to extend the Performance Schedule for a time period that is reasonable under the circumstances.

10.2. PERFORMANCE SCHEDULE DELAYS CAUSED BY CUSTOMER. If Customer (including its other contractors) delays the Performance Schedule, it will make the promised payments according to a revised Payment Schedule; and the Parties will execute a change order to extend the Performance Schedule and Payment Schedule and, if requested, compensate Motorola for all reasonable charges incurred because of the delay. Delay charges may include costs incurred by Motorola or its subcontractors for additional freight, warehousing and handling of Equipment; extension of the warranties; travel; suspending and re-mobilizing the work; additional engineering, project management, and standby time calculated at then current rates; and preparing and implementing an alternative implementation plan.

10.3. PERFORMANCE SCHEDULE DELAYS CAUSED BY MOTOROLA. The Customer and Motorola acknowledge and agree that the Customer will incur costs if Motorola fails to meet one or more of the time frames for delivering Equipment and Services under this Agreement and the proposed Performance Schedule. Accordingly, Motorola agrees to pay liquidated damages at the rate of \$500.00 per day for each day Motorola delays Final System Acceptance as provided in the Performance Schedule. The amount of such liquidated damages shall in no event exceed 5% of the Contract Price. Motorola will receive a day for day credit for delays caused by the Customer, mutually agreed schedule changes and events of Force Majeure. This Section provides Customer's sole and exclusive remedies and Motorola's entire liability in the event of a delay.

Section 11 DISPUTES

The Parties will use the following procedure to address any dispute arising under this Agreement (a "Dispute").

11.1. GOVERNING LAW. This Agreement will be governed by and construed in accordance with the laws of the State in which the System is installed.

11.2. NEGOTIATION. Either Party may initiate the Dispute resolution procedures by sending a notice of Dispute ("Notice of Dispute"). The Parties will attempt to resolve the Dispute promptly through good faith negotiations including 1) timely escalation of the Dispute to executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for the matter and 2) direct communication between the executives. If the Dispute has not been resolved within ten (10) days from the Notice of Dispute, the Parties will proceed to mediation.

11.3. MEDIATION. The Parties will choose an independent mediator within thirty (30) days of a notice to mediate from either Party ("Notice of Mediation"). Neither Party may unreasonably withhold consent to the selection of a mediator. If the Parties are unable to agree upon a mediator, either Party may request that American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the mediation in good faith and will be represented at the mediation by a business executive with authority to settle the Dispute.

11.4. LITIGATION, VENUE and JURISDICTION. If a Dispute remains unresolved for sixty (60) days after receipt of the Notice of Mediation, either Party may then submit the Dispute to a court of competent jurisdiction in Niagara County, NY. Each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts in such state over any claim or matter arising under or in connection with this Agreement.

11.5. CONFIDENTIALITY. All communications pursuant to subsections 11.2 and 11.3 will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections provided by applicable law. The use of these Dispute resolution procedures will not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either Party.

Section 12 DEFAULT AND TERMINATION

12.1. DEFAULT BY A PARTY. If either Party fails to perform a material obligation under this Agreement, the other Party may consider the non-performing Party to be in default (unless a Force Majeure causes the failure) and may assert a default claim by giving the non-performing Party a written and detailed notice of default. Except for a default by Customer for failing to pay any amount when due under this Agreement which must be cured immediately, the defaulting Party will have thirty (30) days after receipt of the notice of default to either cure the default or, if the default is not curable within thirty (30) days, provide a written cure plan. The defaulting Party will begin implementing the cure plan immediately after receipt of notice by the other Party that it approves the plan. If Customer is the defaulting Party, Motorola may stop work on the project until it approves the Customer's cure plan.

12.2. FAILURE TO CURE. If a defaulting Party fails to cure the default as provided above in Section 12.1, unless otherwise agreed in writing, the non-defaulting Party may terminate any unfulfilled portion of this Agreement. In the event of termination for default, the defaulting Party will promptly return to the non-defaulting Party any of its Confidential Information. If Customer is the non-defaulting Party, terminates this Agreement as permitted by this Section, and completes the System through a third Party, Customer may as its exclusive remedy recover from Motorola reasonable costs incurred to complete the System to a capability not exceeding that specified in this Agreement less the unpaid portion of the Contract Price. Customer will mitigate damages and provide Motorola with detailed invoices substantiating the charges.

12.3. NON-APPROPRIATION OF FUNDS. If the funds appropriated are insufficient for any payment due by county under this agreement, this agreement will terminate on the last day of the period for which funds are due. Such termination will be without penalty to the county. The county shall pay contractor all deliverables received and all services performed up to the notice of termination. County shall give written notice to contractor of insufficient funding as soon as practical after the county becomes aware of such insufficiency.

12.4. TERMINATION FOR CONVENIENCE. Niagara County may terminate this Agreement by giving thirty (30) days notice in writing from Niagara County to Motorola Solutions. If this Agreement is terminated by Niagara County as provided, then Motorola Solutions will be paid for all equipment delivered and services rendered up to the point of termination.

Section 13 INDEMNIFICATION

13.1. GENERAL INDEMNITY BY MOTOROLA. Motorola will defend, indemnify and hold Customer harmless from any and all liability, expense (including attorney fees and expenses), judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property resulting from or arising out of the acts or omissions of Motorola, its subcontractors, or their employees or agents, while performing their duties under this Agreement, if Customer gives Motorola written notice within ten (10) business days of receipt of written notice of any claim or suit. Customer will cooperate with Motorola in its defense or settlement of the claim or suit. Customer may provide a list of local counsel or firms which Motorola may consider using in its defense of any claim. In no event will Motorola be required to indemnify the Customer with respect to such risks to the extent they are caused by the acts or omissions of the Customer or the Customer's contractors, over whom Motorola has no authority or control. This

section sets forth the full extent of Motorola's general indemnification of Customer from liabilities that are in any way related to Motorola's performance under this Agreement.

13.2. GENERAL INDEMNITY BY CUSTOMER. Customer will defend, indemnify and hold Motorola harmless from any and all liability, expense (including attorney fees and expenses), judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property resulting from or arising out of the acts or omissions of Customer, its other contractors, or their employees or agents, while performing their duties under this Agreement, if Motorola gives Customer written notice within ten (10) business days of receipt of written notice of any claim or suit. Motorola will cooperate with Customer in its defense or settlement of the claim or suit. In no event will Customer be required to indemnify Motorola with respect to such risks to the extent they are caused by the acts or omissions of Motorola or Motorola's contractors, over whom Customer has no authority or control. This section sets forth the full extent of Customer's general indemnification of Motorola from liabilities that are in any way related to Customer's performance under this Agreement.

13.3. PATENT AND COPYRIGHT INFRINGEMENT.

13.3.1. Motorola will defend at its expense any suit brought against Customer to the extent it is based on a third-party claim alleging that the Equipment manufactured by Motorola or the Motorola Software ("Motorola Product") directly infringes a United States patent or copyright ("Infringement Claim"). Motorola's duties to defend and indemnify are conditioned upon: Customer promptly notifying Motorola in writing of the Infringement Claim; Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and Customer providing to Motorola cooperation and, if requested by Motorola, reasonable assistance in the defense of the Infringement Claim. In addition to Motorola's obligation to defend, and subject to the same conditions, Motorola will pay all damages finally awarded against Customer by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Motorola in settlement of an Infringement Claim.

13.3.2. If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense: (a) procure for Customer the right to continue using the Motorola Product; or (b) replace or modify the Motorola Product so that it becomes non-infringing while providing functionally equivalent performance.

13.3.3. Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Motorola Product with any software, apparatus or device not furnished by Motorola; (b) the use of ancillary equipment or software not furnished by Motorola and that is attached to or used in connection with the Motorola Product; (c) a modification of the Motorola Product by a party other than Motorola; (d) use of the Motorola Product in a manner for which the Motorola Product was not designed or that is inconsistent with the terms of this Agreement; or (e) the failure by Customer to install an enhancement release to the Motorola Software that is intended to correct the claimed infringement.

13.3.4. This Section 13 provides Customer's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim. Customer has no right to recover and Motorola has no obligation to provide any other or further remedies, whether under another provision of this Agreement or any other legal theory or principle, in connection with an Infringement Claim. In addition, the rights and remedies provided in this Section 13 are subject to and limited by the restrictions set forth in Section 14.

Section 14 LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the Contract Price. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE

PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision.

Section 15 CONFIDENTIALITY AND PROPRIETARY RIGHTS

15.1. CONFIDENTIAL INFORMATION. During the term of this Agreement, the parties may provide each other with Confidential Information. Each Party will: maintain the confidentiality of the other Party's Confidential Information and not disclose it to any third party, except as authorized by the disclosing Party in writing or as required by a court of competent jurisdiction; restrict disclosure of the Confidential Information to its employees who have a "need to know" and not copy or reproduce the Confidential Information; take necessary and appropriate precautions to guard the confidentiality of the Confidential Information, including informing its employees who handle the Confidential Information that it is confidential and is not to be disclosed to others, but these precautions will be at least the same degree of care that the receiving Party applies to its own confidential information and will not be less than reasonable care; and use the Confidential Information only in furtherance of the performance of this Agreement. Confidential Information is and will at all times remain the property of the disclosing Party, and no grant of any proprietary rights in the Confidential Information is given or intended, including any express or implied license, other than the limited right of the recipient to use the Confidential Information in the manner and to the extent permitted by this Agreement.

15.2. PRESERVATION OF MOTOROLA'S PROPRIETARY RIGHTS. Motorola, the third party manufacturer of any Equipment, and the copyright owner of any Non-Motorola Software own and retain all of their respective Proprietary Rights in the Equipment and Software, and nothing in this Agreement is intended to restrict their Proprietary Rights. All intellectual property developed, originated, or prepared by Motorola in connection with providing to Customer the Equipment, Software, or related services remain vested exclusively in Motorola, and this Agreement does not grant to Customer any shared development rights of intellectual property. Except as explicitly provided in the Software License Agreement, Motorola does not grant to Customer, either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's Proprietary Rights. Customer will not modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, distribute, sublicense, sell or export the Software, or permit or encourage any third party to do so. The preceding sentence does not apply to Open Source Software which is governed by the standard license of the copyright owner.

Section 16 GENERAL

16.1. TAXES. The Contract Price does not include any excise, sales, lease, use, property, or other taxes, assessments or duties, all of which will be paid by Customer except as exempt by law. If Motorola is required to pay any of these taxes, Motorola will send an invoice to Customer and Customer will pay to Motorola the amount of the taxes (including any interest and penalties) within twenty (20) days after the date of the invoice. Customer will be solely responsible for reporting the Equipment for personal property tax purposes, and Motorola will be solely responsible for reporting taxes on its income or net worth.

16.2. ASSIGNABILITY AND SUBCONTRACTING. Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. In addition, in the event Motorola separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

16.3 WAIVER. Failure or delay by either Party to exercise a right or power under this Agreement will not be a waiver of the right or power. For a waiver of a right or power to be effective, it must be in a writing signed by the waiving Party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

16.4 SEVERABILITY. If a court of competent jurisdiction renders any part of this Agreement invalid or unenforceable, that part will be severed and the remainder of this Agreement will continue in full force and effect.

16.5 INDEPENDENT CONTRACTORS. Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind.

16.6 HEADINGS AND SECTION REFERENCES. The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

16.7 ENTIRE AGREEMENT. This Agreement, including all Exhibits, constitutes the entire agreement of the Parties regarding the subject matter of the Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. A facsimile copy or computer image, such as a PDF or tiff image, of a signature shall be treated as and shall have the same effect as an original signature. In addition, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each Party signs that document.

16.8 NOTICES. Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as Federal Express, UPS, or DHL), or by facsimile with correct answerback received, and will be effective upon receipt:

Motorola Solutions, Inc.

Attn: Christine Binotti

1303 East Algonquin Rd, Schaumburg, IL 60196

fax: 847-576-0721

Customer

Attn: JEFFREY M GLATZ

55 PARK AVE, LOCKPORT, NY 14094

fax: (716) 2439-7212

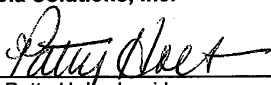
16.9 COMPLIANCE WITH APPLICABLE LAWS. Each Party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement or use of the System. Customer will obtain and comply with all Federal Communications Commission ("FCC") licenses and authorizations required for the installation, operation and use of the System before the scheduled installation of the Equipment. Although Motorola might assist Customer in the preparation of its FCC license applications, neither Motorola nor any of its employees is an agent or representative of Customer in FCC or other matters.

16.10 AUTHORITY TO EXECUTE AGREEMENT. Each Party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the Parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the Party.


16.11. SURVIVAL OF TERMS. The following provisions will survive the expiration or termination of this Agreement for any reason: Section 3.6 (Motorola Software); Section 3.7 (Non-Motorola Software); if any payment obligations exist, Sections 5.1 and 5.2 (Contract Price and Invoicing and Payment); Section 11 (Disputes); Section 14 (Limitation of Liability); and Section 15 (Confidentiality and Proprietary Rights); and all of the General provisions in Section 16.

The Parties hereby enter into this Agreement as of the Effective Date.

Motorola Solutions, Inc.

By: 
Name: Patty Holschneider
Title: MSSSI Vice President
Date: 12/29/11

Customer

By: 
Name: Jeff Blatz
Title: County Manager
Date: 12-29-11

APPROVED BY
NIAGARA COUNTY ATTORNEY
CLAUDE A. JOERG
DECEMBER 29, 2011



Appendix C –Niagara County Spectrum Table

CALL SIGN	FREQUENCY	EMISSION	Waiver	Abandon	Already Narrowbanded
KAS410	151.11500	20K0F3E	X		
KAT537	151.11500	20K0F3E	X		
KEJ698	151.11500	20K0F3E	X		
KEJ699	151.11500	20K0F3E	X		
KEJ704	151.11500	20K0F3E	X		
KEJ706	151.11500	20K0F3E	X		
WZZ265	151.11500	20K0F3E	X		
KEC990	154.13000	11K2F3E			X
KEA954	154.75500	20K0F3E	X		
KC7082	155.17500	20K0F3E	X		
KGV813	155.17500	20K0F3E	X		
KGV815	155.17500	20K0F3E	X		
KGV820	155.17500	20K0F3E	X		
KGV823	155.17500	20K0F3E	X		
KNCC809	155.17500	20K0F3E	X		
KGV813	155.22000	20K0F3E		X	
KVF715	155.22000	20K0F3E		X	
KEA954	155.25000	20K0F3E		X	
KEA954	155.25000	20K0F3E		X	
KC7082	155.34000	20K0F3E	X		
KGV813	155.34000	20K0F3E	X		
KGV815	155.34000	20K0F3E	X		
KGV820	155.34000	20K0F3E	X		
KGV823	155.34000	20K0F3E	X		
KNCC809	155.34000	20K0F3E	X		
KEA954	155.37000	20K0F3E	X		
KEA954	155.37000	20K0F3E	X		
KEA954	156.09000	20K0F3E	X		
WQCC455	423.83750	11K2F3E			X
WQCC454	423.86250	11K2F3E			X
WQCC455	423.88750	11K2F3E			X
WQCC455	423.91250	11K2F3E			X
WQCC455	423.93750	11K2F3E			X
WQCC455	423.96250	11K2F3E			X
WQCC455	424.06250	11K2F3E			X
WQCC454	424.08750	11K2F3E			X

CALL SIGN	FREQUENCY	EMISSION	Waiver	Abandon	Already Narrowbanded
WQCC454	424.18750	11K2F3E			X
WQCC455	424.21250	11K2F3E			X
WQCC455	424.23750	11K2F3E			X
WQCC455	424.26250	11K2F3E			X
WPMU614	424.28750	10K0F1D			X
WPMU614	424.31250	10K0F1D			X
WQCC455	424.33750	11K2F3E			X
WPMU614	424.36250	10K0F1D			X
WQCB737	425.26250	11K2F3E			X
WQCB737	425.28750	11K2F3E			X
WQCB737	425.31250	11K2F3E			X
WQCB737	425.33750	11K2F3E			X
WQCB737	425.36250	11K2F3E			X
WQCB737	425.38750	11K2F3E			X
WQCB737	425.41250	11K2F3E			X
WQCB737	425.43750	11K2F3E			X
WQCB737	425.46250	11K2F3E			X
WQCC454	425.46250	11K2F3E			X
WQCC455	425.46250	11K2F3E			X
WQCC455	425.46250	11K2F3E			X
WQCC455	428.83750	11K2F3E			X
WQCC454	428.86250	11K2F3E			X
WQCC455	428.88750	11K2F3E			X
WQCC455	428.91250	11K2F3E			X
WQCC455	428.93750	11K2F3E			X
WQCC455	428.96250	11K2F3E			X
WQCC455	429.06250	11K2F3E			X
WQCC454	429.08750	11K2F3E			X
WQCC455	429.13750	11K2F3E			X
WQCC455	429.16250	11K2F3E			X
WQCC454	429.18750	11K2F3E			X
WQCC455	429.21250	11K2F3E			X
WQCC455	429.23750	11K2F3E			X
WQCC455	429.26250	11K2F3E			X
WPMU614	429.28750	10K0F1D			X
WPMU614	429.31250	10K0F1D			X
WQCC455	429.33750	11K2F3E			X
WPMU614	429.36250	10K0F1D			X
WPZE790	453.53750	11K2F3E			X

CALL SIGN	FREQUENCY	EMISSION	Waiver	Abandon	Already Narrowbanded
KEA954	453.78750	20K0F3E	X		
WPKJ517	453.87500	20K0F3E	X		
KEA954	458.78750	20K0F3E	X		
KB95752	460.61250	20K0F3E	X		
KB95752	465.61250	20K0F3E	X		

Appendix D – Narrowbanding Project Schedule

Niagara County, NY Preliminary Project Schedule																
ASTRO25 UHF DIGITAL RADIO SYSTEM																
ID	Task Name	Duration	Start	Finish	Predecessors	Qtr 3, 2011	Qtr 4, 2011	Qtr 1, 2012	Qtr 2, 2012	Qtr 3, 2012	Qtr 4, 2012	Qtr 1, 2013	Qtr 2, 2013	Qtr 3, 2013	Qtr 4, 2013	Qtr 1, 2014
0	NIAGARA COUNTY, NY PRELIMINARY PROJECT SCHEDULE	513 days?	Thu 12/15/11	Mon 12/2/13												
1	CONTRACT	17 days	Thu 12/15/11	Fri 1/6/12												
2	Contract Award	0 days	Thu 12/15/11	Thu 12/15/11												
3	Payment Milestone: 10% of the Contract Less Subscriber Equipment upon Execution of Contract	0 days	Thu 12/15/11	Thu 12/15/11	2											
4	Contract Administration	1 day	Thu 12/15/11	Thu 12/15/11	2											
5	PROJECT KICK-OFF	3 days	Wed 1/4/12	Fri 1/6/12												
10	CONTRACT DESIGN REVIEW (CDR)	33 days	Thu 12/15/11	Mon 1/30/12												
11	County Finalizes Sites	0 days	Wed 1/11/12	Wed 1/11/12	9FS+3 days											
12	Finalize Coverage/Site Design	1 day	Thu 1/12/12	Thu 1/12/12	11SS											
13	Frequency Plan/Loading Analysis	5 days	Thu 1/12/12	Wed 1/18/12	12SS											
14	Finalize Site Development SOW	2 days	Fri 1/13/12	Mon 1/16/12	12											
15	Finalize Site Development Implementation Plan/Schedule	1 day	Tue 1/17/12	Tue 1/17/12	14											
16	Finalize Backhaul Design	2 days	Wed 1/18/12	Thu 1/19/12	15											
17	County Approval on Coverage and Site Design (Site/Coverage Design Frozen)	0 days	Fri 1/27/12	Fri 1/27/12	16, 13											
18	ASTRO 25 Radio System	1 day	Thu 1/19/12	Thu 1/19/12	12, 13											
19	Subscribers	2 days	Thu 1/19/12	Fri 1/20/12	18SS											
20	Dispatch Consoles and Logging Recorder	1 day	Thu 1/19/12	Thu 1/19/12	19SS											
21	IV&D Infrastructure/OTAP	1 day	Thu 12/15/11	Thu 12/15/11												
22	Detailed System Design Completed	0 days	Fri 1/27/12	Fri 1/27/12	21, 17											
23	Update Equipment List	1 day	Fri 1/27/12	Fri 1/27/12	22											
24	Finalize System Description	1 day	Fri 1/27/12	Fri 1/27/12	23SS											
25	Develop Preliminary Fleetmap (Number of Talk Groups)	1 day	Fri 1/27/12	Fri 1/27/12	24SS											
26	Update system Drawings	2 days	Fri 1/27/12	Mon 1/30/12	25SS											
27	Update SOW/Implementation Documents - Initial Cutover Plan	1 day	Fri 1/27/12	Fri 1/27/12	22											
28	Finalize Project Schedule	1 day	Mon 1/30/12	Mon 1/30/12	27											
29	Final CDR approval by County (System Design and Implementation Frozen)	0 days	Mon 1/30/12	Mon 1/30/12	28, 26											
30	Payment Milestone: 10% of the Contract Less Subscriber Equipment upon CDR Completion	0 days	Mon 1/30/12	Mon 1/30/12	29											
31	ORDER PROCESSING	21.5 days?	Tue 1/31/12	Wed 2/29/12												
32	ORDER PROCESSING	0 days?	Thu 2/23/12	Thu 2/23/12												
33	ORDER PROCESSING	0 days?	Wed 2/29/12	Wed 2/29/12												
34	FACTORY ORDER	4.5 days	Tue 1/31/12	Mon 2/6/12												
42	MANUFACTURING AND CCSi STAGING	141.5 days	Mon 2/6/12	Tue 8/21/12												
43	EQUIPMENT MANUFACTURING	75 days	Mon 2/6/12	Mon 5/21/12												
47	FLEET MAPPING	29 days	Thu 7/12/12	Tue 8/21/12												
60	STAGING KICK-OFF	17 days	Tue 5/1/12	Wed 5/23/12												
64	STAGING	26 days	Wed 5/23/12	Wed 6/27/12</												

Niagara County, NY Preliminary Project Schedule
ASTRO25 UHF DIGITAL RADIO SYSTEM

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